U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31265392

Date: JUL. 17, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a senior director of product management, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he had received a one-time achievement (a major, internationally recognized award) or that he satisfied at least three of the initial evidentiary criteria, as required for the requested classification. The Petitioner filed a subsequent motion to reopen and reconsider, which the Director granted. After reopening and reconsidering the matter, the Director again denied the petition, concluding that the Petitioner did satisfy the initial evidentiary requirements for this classification but did not establish in a final merits determination, as required, that he has sustained national or international acclaim and is among the small percentage at the very top of his field. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a technology product manager with more than 16 years of international experience managing technology product strategy. He states that his engineering and product expertise with product lifecycle management and model-based simulation and testing has been applied in various industries, including "automotive, industrial automation, medical devices, semiconductor, and aerospace/defense." He states that he intends to continue his work in the United States managing "groundbreaking hyper-niche system engineering technologies."

A. Evidentiary Criteria

As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he meets the initial evidence requirements by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed that he could meet eight of these criteria:

- (i), Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published materials in major trade or professional publications or other major media;
- (iv), Participating as a judge of the work of others in the field;

- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (viii), Performing in leading or critical roles for organizations or establishments with a distinguished reputation; and
- (ix), Commanding a high salary, or other significantly high remuneration for services, in relation to others in the field.

After the initial filing, the Director issued a request for evidence (RFE), notifying the Petitioner that the evidence in the record was not sufficient to demonstrate that he met any of the claimed criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and allowed the Petitioner an opportunity to submit additional evidence.

Upon review of the Petitioner's response to the RFE, in a decision dated April 28, 2023, the Director concluded that the record did not demonstrate that he satisfied at least three of the initial evidentiary criteria, as required for the requested classification. However, after granting the Petitioner's subsequent motion to reopen and reconsider, the Director issued a new decision, dated October 16, 2023, concluding that the Petitioner demonstrated that he met three of the ten criteria. Specifically, the Director concluded that the Petitioner met the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (vi), and (viii), having participated as a judge of the work of others in the field, authored scholarly articles in major trade or professional publications, and performed in a leading or critical role for organizations with a distinguished reputation.

The Director fully discussed and analyzed each of the total eight claimed criteria in the RFE and in two separate decisions. She explained the deficiencies in the evidence in the record as it relates to 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v), and (ix). However, because the Petitioner demonstrated that he met the initial evidence requirements of three criteria, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze the petitioner's accomplishments together and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. As noted above, in a final merits determination, the Director looks at whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.[1]

B. Final Merits Determination

The Director concluded that the record, as a whole, did not establish that the Petitioner garnered sustained national or international acclaim and that he has risen to that small percentage at the very top of the field of endeavor. The Director noted that the record demonstrates that the Petitioner has garnered some attention in the field and has been recognized for his work; however, it does not support the Petitioner's claims that his work has made an impact in the field of technology product management, or that he has achieved sustained national or international acclaim based on his achievements.

[1] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual.

In determining whether a petitioner has enjoyed sustained national or international acclaim, we consider that such acclaim must be maintained, and the individual's achievements have been recognized in the field of expertise. *See* 8 C.F.R. § 204.5(h)(3). *See also* 6 *USCIS Policy Manual, supra,* at F.2(A)(1).

On appeal, the Petitioner submits a brief referencing the same arguments and evidence previously submitted. The Petitioner asserts that by satisfying three of the ten criteria that are required to demonstrate extraordinary ability, he met the preponderance of the evidence standard and thus qualifies for the requested classification. It appears, however, that the Petitioner focuses entirely on his ability to meet at least three of ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) as the basis for claiming that he is an individual of extraordinary ability. We disagree. As noted above, and as previously stated both in the Director's RFE and two decisions, meeting the minimum requirements by providing evidence to meet at least three initial criteria is not sufficient to establish that the Petitioner is an individual of extraordinary ability, but instead is only the first step. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(2). Here, the second step of the process is based on a comprehensive qualitative analysis of the evidence.

The Director concluded in a final merits determination that the Petitioner did not establish by a preponderance of the evidence that he has demonstrated sustained national or international acclaim to establish that he is among the small percentage at the very top of the field of endeavor. *See id*. Although the Petitioner reemphasizes his career successes and skills on appeal, he does not address the Director's final merits determination analysis and instead continues to focus exclusively on the fact that the minimum evidentiary requirements were satisfied.

On appeal, the Petitioner asserts that the abuse of discretion of one particular officer negatively influenced the decision in this matter. He asserts that after granting the motion to reopen and reconsider and withdrawing the initial decision, the same officer should not have been allowed to continue to adjudicate the petition. Here, we note that the Petitioner makes several incorrect statements about the adjudication of this matter.[2] First, he incorrectly states that the Administrative Appeals Office (AAO) granted the Petitioner's motion to reopen and reconsider the matter. In fact, this decision was made by the Director and not the AAO.

Next, the Petitioner incorrectly states that evidence submitted with the combined motions was "prima facie evidence" that he had established two of the initial evidence criteria, and that the motion decision "specifically address[ed] the elite nature of [his membership in an association that requires outstanding achievements]." The Director's decision granting the combined motions states that the "evidence submitted … overcomes the grounds stated for denial," but makes no determination that the Petitioner had satisfied the requirements of 8 C.F.R. § 204.5(h)(3)(ii), membership in an association that requires outstanding achievements. Nor does it state that the Petitioner met any of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Instead, the Director's separate decision following reopening, dated October 16, 2023, addresses the criteria he met.

[2] On appeal, the Petitioner's representative requests a refund of the filing fee paid for Premium Processing service. However, we do not handle filing fees and exercise no control over requests such as the one made by counsel.

Additionally, the Petitioner incorrectly states that the Director determined that he met only two of the claimed criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). As noted above, the Director concluded that the Petitioner had established that he met the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (vi), and (viii), having participated as a judge of the work of others in the field, authored scholarly articles in major trade or professional publications, and performed in a leading or critical role for organizations with a distinguished reputation. Therefore, the Director found that the Petitioner met three initially required criteria to progress to consideration under a final merits determination.

On appeal, the Petitioner also asserts that the Director erred in not issuing a RFE to allow him an opportunity to submit additional evidence demonstrating his national acclaim. He states, "Having previously stated no basis for any putative deficiency regarding acclaim, [the Director] is therefore barred from raising this issue of acclaim at this point."

The regulation at 8 C.F.R. § 204.5(h)(3) lists the initial evidence that is required when filing a petition seeking classification as an individual of extraordinary ability, which includes evidence that the individual "has sustained national or international acclaim." As noted above, in determining sustained national or international acclaim, not only does the Director examine the evidence in the record meant to satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x), but the second step of the process requires a comprehensive qualitative analysis of the evidence. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(2)(stating, "the officer should consider the petition in its entirety to determine eligibility according to the standard"). Here, the Director did issue a detailed RFE and two decisions informing the Petitioner of deficiencies in the evidence in the record in demonstrating his eligibility as an individual of extraordinary ability. As noted above, in the second decision, dated October 16, 2023, the Director considered the totality of the material provided, including evidence related to the Petitioner's eight claimed criteria, in a final merits determination to assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor, and concluded that it did not. We note that the Petitioner did not submit additional evidence on appeal related to any aspect of the case, although he had the opportunity to do so.

The Petitioner also asserts that the Director ignored evidence in the record, specifically a "technical scholarly white paper" discussing "complex hardware and software simulation on real-time simulation and testing." The Petitioner asserts that "this white paper alone represents acclaim." We conclude that the record reflects the Director's consideration of all evidence in the totality even though she did not address each piece of evidence individually. The five-page white paper does not indicate the name of the author and does not include a date of publication. The paper appears to be promotional in nature, describing a solution for real-time testing and simulation developed by the Petitioner's employer. The Petitioner, himself, is not mentioned in the paper. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (*citing Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

Although the Petitioner met three of the initial criteria to reach a final merits determination, and therefore, a full discussion of the remaining criteria is not necessary, we will briefly address them to the extent that they may have added to any final merits determination.

On appeal, the Petitioner states that his inclusion on the list of "40 Under 40 Innovators" from [redacted] in 2022 "constitutes at least a degree of recognition of [his] acclaim." In the RFE and both decisions, the Director considered this evidence and noted that the Petitioner did not establish that this constitutes a prize or award based on the plain language of 8 C.F.R. § 204.5(h)(3)(i). Although this mention may be considered some degree of recognition for the Petitioner, we agree with the Director that the record does not establish that the Petitioner was the recipient of a prize or award. Nor does this recognition demonstrate a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The Petitioner also asserts that his original contributions to the field demonstrate his national acclaim, including "documented breakthroughs in the 'hyper niche field' of real-time simulation," authoring a white paper that has been cited and republished, and presenting "declassified military age tech to commercial civil manufacturing" at an automation fair conference. The Director also addressed these contributions as described in letters of recommendation in the record in conducting a final merits determination. The Director determined that, while the letters praise the Petitioner and his work, the record "does not include corroborating evidence to show that he is viewed by the overall field as being among that small percentage at the very top of the field of endeavor." The USCIS Policy Manual notes that, "Detailed letters from experts in the field explaining the nature and significance of the person's contributions may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance." 6 *USCIS Policy Manual, supra,* at F.2(B)(1). We agree with the Director's analysis. The attestations describe the Petitioner's accomplishments, but the record does not include corroborating evidence to support that these accomplishments are original contributions of major significance demonstrating an achievement of national or international acclaim and recognition in the field of technology product management.

The Director further determined that the record did not include evidence corroborating that the Petitioner's presentation influenced attendees or resulted in national or international acclaim for the Petitioner. As noted above, the Petitioner does not submit additional evidence on appeal to overcome this deficiency.

In considering the Petitioner's white paper, as noted above, the paper does not credit the Petitioner as author and appears to be promoting technology developed by the Petitioner's employer. The paper does not credit the Petitioner with any original contribution to the field.

The Petitioner asserts that his high level of remuneration also demonstrates his national acclaim. Here, the Petitioner relies on tax records reflecting his wages in 2021 and 2022 and provides salary information from ZipRecruiter.com for comparison. The Director analyzed this evidence in the RFE and in both decisions, noting deficiencies in the salary information used for comparison. Specifically, the Director noted that the salary information from ZipRecruiter.com is based on self-reported information where accuracy cannot be confirmed. She further noted that the ZipRecruiter.com salary

information is for 2023 and does not correspond to the evidence of the Petitioner's wages in 2021 and 2022. The Petitioner does not provide new evidence on appeal to address these deficiencies.

The Petitioner points to a statement from a talent acquisition specialist attesting to his high salary. The statement makes no mention of the Petitioner's actual salary or remuneration. The author states, "Both [the Petitioner's] past and current salaries have steadily remained while already at the ninety-fifth percentile among graduates with this degree and in this field, represents a fraction of his earning potential." However, the author of the statement does not provide any citation or explanation of how the Petitioner's salary is calculated to be at the 95th percentile. Nor does the author reference any data points to define the meaning or relevance of "the 95th percentile." Without corroborating evidence we cannot consider this statement to demonstrate that the Petitioner's compensation is high relative to that of others working in the field or of his national acclaim.

The Petitioner also asserts that his membership in the Institute of Electrical and Electronics Engineers (IEEE) demonstrates his national acclaim. On appeal, the Petitioner states that, in granting the motion to reopen and reconsider, there were "implicit instructions" that he satisfied multiple criteria related to his association with the IEEE. As we have noted above, the Director's decision to grant the motion to reopen and reconsider in this matter did not make any determination as to the Petitioner's eligibility or state that the Petitioner met any of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Instead, the Director acknowledged that the Petitioner met the three initial criteria in her decision of October 16, 2023. The motion decision did not give any instructions or discuss at all the Petitioner's membership in the IEEE. While the Director did conclude, in her October 16, 2023 decision, that the Petitioner satisfied two criteria based on his work in the IEEE - 8 C.F.R. § 204.5(h)(3)(iv) and (viii), having participated as a judge of the work of others in the field and performed in a leading or critical role for organizations with a distinguished reputation – the Director also analyzed this membership in making a final merits determination. Here, the Director noted that the IEEE bylaws do not establish "that requirements for membership reflect outstanding achievements, as judged by recognized national or international experts, nor does it represent an individual who is among the small percentage at the very top of the field." The Petitioner does not provide new evidence on appeal to address this. Although the Petitioner expresses disagreement with the Director's analysis of his membership in the IEEE, he does not explain how the Director's analysis was contrary to law or policy. While the Petitioner states that the Director "refuses to concede the elite nature of [the] Senior Membership of which less than ten percent (10%) of the global membership is ever elevated," the record does not include evidence to support this statement. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Upon review of the totality of the evidence, we conclude that the Director thoroughly analyzed the Petitioner's evidence and arguments and provided him with a complete decision reaching the correct conclusion. We agree with the Director that the Petitioner here has not demonstrated sustained national or international acclaim to demonstrate that he is among the small percentage at the very top of the field of endeavor and has not established eligibility as an individual of extraordinary ability.[3]

[3] As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he will continue to work in his area of extraordinary ability, or whether his entry will substantially benefit the United States under section 203(b)(1)(A)(ii), (iii) of the Act. Accordingly, we decline to reach and hereby reserve these issues. *See INS v. Bagamasbad,* 429 U.S. 24, 25-26 (1976) ("courts and agencies are not required to make findings

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the recognition of his work is indicative of the required sustained national or international acclaim required by section 203(b)(1)(A) of the Act or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.

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on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).